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Letter Ruling 84-22: Equipment Rentals; Operator Fees

April 27, 1984

You request a ruling regarding the application of the sales tax to certain operations of _____ ("Company").

The Company's operations include concrete sawing, core boring, and trenching for its customers. If trenching machines or bucket loaders are being used, the Company's employee operates the machine, and the customer is charged by the hour. Concrete sawing and core boring involve the cutting of concrete, and are usually charged on a per foot basis. Sometimes the customers are charged a fixed contract price for concrete sawing and core boring, regardless of the time required or the footage.

Rentals of tangible personal property are included in the definition of "sales" and are subject to the sales tax. (G.L. c. 64H, § 1(12)(a)). But personal service transactions which involve no transfer of tangible personal property or which involve transfers as inconsequential elements for which no separate charge is made are not defined as sales and are not subject to the sales tax. (G.L. c. 64H, § 1(13)).

All transactions for the use of equipment and an operator in which the charge is determined on a time basis are presumed to constitute leases or rentals. In the absence of a written contract entered into prior to the use of the equipment clearly showing that payments under the contract are for the performance of a specific job and not for the lease or rental of equipment, the taxpayer must prove that no rental or lease of equipment has occurred. If a rental or lease of equipment has occurred and the charge for the operator is separately stated in the billing at the time of the rental, the charge for the operator is not subject to the sales tax, if the charge is set in good faith.

Based on the foregoing, it is ruled that:

1. The hourly charges for trenching machines and bucket loaders operated by the Company's employee are subject to the sales tax, unless the Company can establish that no rental of tangible personal property has occurred. If a separate charge for the operator of the equipment is made in good faith, that charge is not subject to the sales tax.
2. The charges on a per foot basis for concrete sawing and core boring are not subject to the sales tax.
3. The fixed contract charges for concrete sawing and core boring are not subject to the sales tax.

Very truly yours,

/s/Ira A. Jackson
Commissioner of Revenue

IAJ:JES:mf

LR 84-22

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